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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable J. Scott Vowell
Presiding Circuit Judge, 10th Judicial Circuit
716 Richard Arrington Jr. Boulevard, North
Room 370
Birmingham, Alabama 35203

Circuit Clerks -- Circuit Judges --
Appointments -- Vacancies in Office --
Jefferson County

Pursuant to Section 160(b) of the Constitution of Alabama, a vacancy in the office of the deputy clerk of the circuit court of the Tenth Judicial Circuit sitting at Bessemer shall be filled by all of the judges in Jefferson County, including the circuit judges in both the Bessemer and Birmingham Divisions.

Dear Judge Vowell:

This opinion of the Attorney General is issued in response to your question.

QUESTION

In filling a vacancy in the office of the circuit clerk of the Bessemer Division in the 10th Judicial Circuit, does Section 160(b) of the Constitution of Alabama require all of the circuit judges in the 10th Judicial Circuit to fill the vacancy, including the judges in both the Bessemer Division and the Birmingham Division; or should the vacancy be filled solely by the circuit judges sitting in the Bessemer Division?

FACTS AND ANALYSIS

Vacancies in the office of the circuit clerk are filled in accordance with Section 160(b) of article VI of the Constitution of Alabama. Section 160(b) states as follows:

Clerks of the circuit courts shall be elected by the qualified electors in each county for a term of six years. If the office of register in chancery continues to be provided by law then the clerk of the circuit court may also fill such office in a manner prescribed by law. Vacancies in the office of clerk of the circuit court shall be filled by the judge or judges of the circuit court who have jurisdiction over the county in which the office of clerk of the circuit court is located.

ALA. CONST. art. VI, § 160(b) (amend. 328). Section 160(b) would require all of the circuit judges who have jurisdiction over a county to fill a vacancy in that office.

The Tenth Judicial Circuit, however, is unique in that it is divided into two territorial divisions, the Birmingham Division and the Bessemer Division, each with a separate circuit clerk's office operating independently from the other. The Bessemer Division was first established by section 2 of Act 281 (1892-93). That act was repealed in 1900, but was reenacted in 1919 by Local Act 213. Section 2 of the 1919 act states, in pertinent part, as follows:

The said Circuit Court of the Tenth Judicial Circuit, holding at Bessemer, as in this Act provided, shall have, exercise and possess all of the jurisdiction and powers which are now, or which may hereafter be conferred by law in the several Circuit Courts of this State, which said jurisdiction and powers shall be exclusive in, limited to, and extend over that portion of the territory of the county of Jefferson which is included in [the enumerated precincts] . . . and from and over the above mentioned and described territory all jurisdiction and powers heretofore or now exercised or existing therein by the Circuit Court of the

Tenth Judicial Circuit, as now held at Birmingham, is hereby expressly excluded.

1919 Ala. Acts No. 213, 62, 63.

A long line of cases from Alabama's appellate courts have concluded that the Bessemer local act is venue legislation rather than legislation modifying the jurisdiction of the circuit court within the Tenth Judicial Circuit. See *Glenn v. Wilson*, 455 So. 2d 2, 4 (Ala. 1984); *Ex parte World Omni Fin. Corp.*, 491 So. 2d 236, 237 (Ala. 1986); and *Ex parte Johnson*, 692 So. 2d 843, 845 (Ala. Civ. App. 1997).

In *Ex parte Walter Indus., Inc.*, 879 So. 2d 547, 551 (Ala. 2003), the Alabama Supreme Court stated the following: "While at times this limitation has been described as jurisdictional, this Court has recognized since *Glenn v. Wilson* . . . that the limitation in the Act is one of venue." *Id.* The act has no effect on the actual jurisdiction of the circuit court in either the Birmingham Division or the Bessemer Division. Rather, the act establishes limitations on the power the circuit court sitting in the Bessemer Division to "only hear cases arising in the territorial boundaries of the division." *Id.* at 552.

The circuit clerk's office located in the Bessemer Division was established pursuant to section 12-17-98 of the Code of Alabama, which creates the office of deputy clerk of the circuit court of the tenth judicial circuit sitting at Bessemer. That section states as follows:

At the general election held on the first Tuesday after the first Monday in November, 1982, and every six years thereafter, there shall be elected by the qualified voters of the territory over which the circuit court of the tenth judicial circuit sitting at Bessemer has and exercises jurisdiction a deputy clerk of the circuit court, who shall hold office for six years and until his successor is elected and qualified. He shall, at the time of his election and during his term of office, reside within and be a qualified voter of the territory from which he is elected. Such deputy clerk shall perform the same duties and exercise the same authority under the supervision of the circuit court when being held at said place as if

he were the circuit clerk. Before entering upon the duties of his office such deputy clerk shall take and subscribe to the same oath of office, and enter into the same bond as circuit court clerks of the state, and shall be subject to the same liabilities. In addition to the duties and authorities hereinbefore in this section set out, such deputy clerk shall perform for said division of said court the duties of register of said court at said place.

ALA. CODE § 12-17-98 (2006).

Section 12-17-80 of the Code states that the clerk in the Bessemer Division “shall for all purposes be deemed a circuit clerk and register and shall be elected as provided for by Section 12-17-98.” ALA. CODE § 12-17-80 (2006). Further, pursuant to section 12-17-90 of the Code, vacancies in the office of circuit clerk are to be filled pursuant to Section 160(b) of the Constitution of Alabama.

Despite the fact that the Bessemer local act establishes a separate division for venue purposes and the provisions of the Code of Alabama create a separate functioning clerk’s office headed by a deputy clerk elected by the qualified voters of the Bessemer Division, no law appears to contradict the provisions Section 160(b) of the Constitution of Alabama to limit the authority to fill a vacancy in the office of the deputy clerk of the circuit court of the Bessemer Division solely to those circuit judges hearing cases within that division. Section 160(b) specifically states that the vacancy is to be filled by the “judge or judges of the circuit court who have jurisdiction over the county in which the office of clerk of the circuit court is located.” ALA. CONST. art. VI, § 160(b) (amend. 328).

As the Alabama Supreme Court stated in *Glenn v. Wilson*, 455 So. 2d at 4, the Bessemer local act “does not diminish the general jurisdiction” of the judges of the circuit court sitting in either the Birmingham Division or Bessemer Division. The office of the deputy clerk of the circuit court of the tenth judicial circuit sitting at Bessemer is located in Jefferson County. Looking at the plain wording of Section 160(b), it is the opinion of this Office that all of the circuit judges in Jefferson County, including the circuit judges in the Birmingham Division, are empowered with the authority to fill the vacancy in that office.

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CONCLUSION

Pursuant to Section 160(b) of the Constitution of Alabama, a vacancy in the office of the deputy clerk of the circuit court of the Tenth Judicial Circuit sitting at Bessemer shall be filled by all of the judges in Jefferson County, including the circuit judges in both the Bessemer and Birmingham Divisions.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Nathan Wilson, Legal Division, Administrative Office of Courts.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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